STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0866

State of Minnesota,
Respondent,

vs.

Thomas Lee Griffin,
Appellant.

Filed June 30, 2014
Affirmed
Halbrooks, Judge

Nicollet County District Court
File No. 52-CR-12-5

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Following a court trial, appellant argues that his convictions of fourth- and fifth-degree assault should be reversed because the record does not support a conclusion that his jury-trial waiver was knowing, intelligent, and voluntary. We affirm.

FACTS

On September 6, 2011, appellant Thomas Lee Griffin was residing at and receiving treatment from the Minnesota Sex Offender Program (MSOP) in St. Peter. According to the criminal complaint, on the evening of September 6, Griffin was asked repeatedly by MSOP staff members to reduce the volume of the radio in his room. He declined to do so. A specially trained team of security counselors eventually approached Griffin's room to remove his radio. Griffin refused to surrender his radio and threatened to harm the security counselors if they entered his room. The team then entered, and Griffin knocked a counselor's helmet from his head and struck him five to six times in the head with a closed fist, causing bruising, bumps, abrasions, and pain.

On September 12, a Minnesota Department of Human Services special investigator interviewed Griffin. The investigator, who is not a police officer, was not armed, and was dressed in business attire, interviewed Griffin in a common room at the St. Peter facility. Before questioning Griffin, the investigator advised him of his *Miranda* rights, inquired whether he understood these rights, and then asked if he wanted to answer questions. Griffin responded that he understood the procedure and his rights and agreed to answer questions.

Griffin later moved the district court to exclude this statement to the special investigator on the ground that he was unable to make a knowing and intelligent waiver of his right to remain silent. At the hearing, the state offered an audio recording of the interview, a transcript of the interview, and the testimony of the investigator. The district court determined that Griffin was not in custody when he gave his statement. But because this determination was a close call, the district court also analyzed whether Griffin's waiver was adequate. The district court found that there was nothing in the record "to support a contention that [Griffin]'s intelligence and ability to comprehend are significantly below normal" and stated that, "[o]verall, the interview gives the impression that [Griffin] understood the questions being asked of him and gave his own answers." The district court therefore found that Griffin's waiver of his right to remain silent was knowing and intelligent, and denied his motion to exclude his statement. Griffin does not challenge this ruling on appeal.

On the morning of trial, Griffin's attorney informed the district court that he and Griffin had discussed the matter and that Griffin had elected to waive his right to a jury trial and proceed with a court trial.

> DEFENSE ATTORNEY: Also, Your Honor, the prosecution has noted that we waived, although we haven't waived it on the record, the right to a jury trial. And Mr. Griffin and I had talked about that earlier in the week and perhaps we could make a record on that.
>
> THE COURT: Would you please?
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> DEFENSE ATTORNEY: I will. So Mr. Griffin, you understand that you have a number of rights [that] we've talked about over the time that I've been representing you.

For instance, you may or may not testify; that will be up to you. You understand that?

THE DEFENDANT: Yeah.

DEFENSE ATTORNEY: And we also talked about whether you would have a jury decide whether you're guilty or not, or have the Court by itself decide? Is that right?

THE DEFENDANT: Yeah.

DEFENSE ATTORNEY: Okay. And you understand that there is someone recording this. That there is a recording of this so everything has to be said yes or no, that kind of stuff?

THE DEFENDANT: I understand.

DEFENSE ATTORNEY: Okay. And is it correct that you've had time to think about whether you want to have a jury or a court trial?

THE DEFENDANT: Yes.

DEFENSE ATTORNEY: Okay. And do you want to have a court trial?

THE DEFENDANT: Yes.

DEFENSE ATTORNEY: Okay. Although you know you can have a jury trial?

THE DEFENDANT: I understand.

DEFENSE ATTORNEY: Okay.

THE COURT: He wasn't sworn for that so I'm going to ask, sir, that you stand up and raise your right hand to be sworn. . . .

[Griffin is sworn.]

THE COURT: . . . your lawyer, just went over some rights with you. One of those rights is whether or not you wanted to

have a jury trial. And you indicated that you want to waive that right, is that correct?

A. Yes, it is.

THE COURT: And you want your trial to the Court, is that correct?

A. Yes.

THE COURT: Anything else for the record?

PROSECUTOR: Your Honor, if I could inquire, just a few questions?

THE COURT: Sure.

PROSECUTOR: Mr. Griffin, you understand that this is—you're charged with a felony level offense?

A. Yes.

PROSECUTOR: Okay. And you understand that in a felony trial if you wanted a jury it would be a jury of 12 people and that you couldn't be found guilty unless each and every one of those 12 people believed beyond a reasonable doubt that you did commit this crime?

A. Yes.

PROSECUTOR: Okay. So you're giving up the right to have that opportunity to speak to a group of 12 people and ask for a unanimous verdict?

A. Yes.

PROSECUTOR: Thank you. I have no further questions, Your Honor.

A two-day court trial was then held, in which Griffin raised several defenses including mental deficiency and mental illness. The district court found Griffin guilty as

charged, convicted him, and imposed a sentence that represented a downward departure from the sentencing guidelines. This appeal follows.

D E C I S I O N

Under both the United States and Minnesota Constitutions, a defendant is entitled to trial by jury. U.S. Const. art. III, § 2, cl. 3; U.S. Const. amend. VI; Minn. Const. art. 1, §§ 4, 6. Under Minnesota law, the right to a jury trial attaches when a defendant is charged with an offense that is punishable by incarceration. Minn. R. Crim. P. 26.01, subd. 1(1)(a); *State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011). Here, Griffin was charged with a violation of Minn. Stat. § 609.2231, subd. 3a(b) (2010), which is a felony.

A defendant may waive his right to a jury trial. *State v. Pietraszewski*, 283 N.W.2d 887, 889-90 (Minn. 1979) (citing Minn. R. Crim. P. 26.01, subd. 1(2)(a)). A jury-trial waiver must be knowing, intelligent, and voluntary. *State v. Dettman*, 719 N.W.2d 644, 651 (Minn. 2006). Minn. R. Crim. P. 26.01, subd. 1(2)(a), provides:

> The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to trial by jury, and after having had an opportunity to consult with counsel.

The waiver requirements of rule 26.01 are strictly construed. *State v. Fluker*, 781 N.W.2d 397, 402 (Minn. App. 2010).

Whether a criminal defendant has been denied the right to a jury trial is a constitutional question, which appellate courts review de novo. *Kuhlmann*, 806 N.W.2d at 848-49. We also review de novo whether the district court complied with Minn. R.

Crim. P. 26.01, subd. 1(2)(a). *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002).

Here, Griffin's waiver was made personally on the record in open court. The district court, prosecutor, and Griffin's counsel informed Griffin of his right to a jury trial. Griffin's counsel inquired of Griffin whether the two had spoken earlier in the week about Griffin's jury-trial rights, and Griffin agreed that they had. The basic requirements of rule 26.01, subdivision 1(2)(a), were therefore satisfied.

Griffin nevertheless argues that due to his low cognitive functioning, mental illness, and because he had been civilly committed since early adulthood, the colloquy supporting his jury-trial waiver was inadequate. Griffin does not argue that he was not competent to waive his right to a jury trial, rather he argues that because of his particular circumstances, the district court should have done more to ensure that he fully understood the rights that he was waiving.

Griffin contends that the district court should have inquired about his specific understanding of the differences between a jury trial and court trial. Our supreme court addressed a similar argument in *State v. Ross*, where the defendant asserted that the district court "failed to ask the 'searching questions' needed to determine whether the defendant understood the consequences of his waiver." 472 N.W.2d 651, 653 (Minn. 1991). The supreme court concluded that, while the focus of the district court's inquiry is to determine the defendant's understanding, "the defendant [need not] have an exhaustive knowledge of all the doctrinal subtleties of Sixth Amendment jurisprudence." *Id*. at 654 (quotation omitted). The specific nature of the district court's inquiry "may vary with the

circumstances of a particular case." *Id.* And this court has concluded that, even when a defendant proceeds pro se, a detailed explanation of the nature of a jury trial versus a court trial "is not an absolute requirement." *State v. Johnson*, 354 N.W.2d 541, 543 (Minn. App. 1984) (declining to mandate adherence to the guidelines announced in *United States v. Delgado*, 635 F.2d 889 (7th Cir. 1981)).

Under Minnesota law, the district court must be satisfied that the defendant is informed of his jury-trial rights and that his waiver is voluntary. *Ross*, 472 N.W.2d at 653. "The purpose of the [district] court's colloquy with the defendant is to learn whether the defendant's waiver is knowingly and voluntarily made. The focus of the inquiry is on whether the defendant understands the basic elements of a jury trial." *Id*. at 654.

In *Pietraszewski*, although the district court should have questioned a civilly committed, mentally ill defendant "more thoroughly in open court to determine whether he was aware of his right to a jury trial and had conferred with his attorney about the consequences of a waiver," there was sufficient evidence in the record from which the district court could have determined that defendant's waiver was voluntarily and intelligently made because the district court had had "numerous contacts with defendant prior to trial." 283 N.W.2d at 890. In this instance, the on-the-record waiver was more thorough than that in *Pietraszewski*,[1] and the district court similarly had other contacts

[1] The entire on-the-record colloquy in *Pietraszewski* was:

> THE COURT: The next question, Mr. Pietraszewski, your counsel tells me that you were willing and in fact preferred to

with the defendant through which to assess his capacity to understand. Earlier in the case, the parties had engaged in motion practice about Griffin's waiver of his constitutional right to remain silent. The district court held a hearing on the issue and conducted "a subjective factual inquiry to determine whether, under the totality of the circumstances, the waiver was knowing, voluntary, and intelligent." The district court reviewed case law addressing *Miranda* waivers by defendants who were mentally "slow," immature, naïve, and vulnerable to pressure. Applying the case law to the circumstances of the interview, the district court determined that Griffin had the capacity to waive his *Miranda* rights and that he did so knowingly, intelligently, and voluntarily.

It was against this backdrop that the district court considered Griffin's waiver of his right to a jury trial. The on-the-record colloquy included questioning by both attorneys as well as the district court. Griffin acknowledged that he had discussed his rights with his attorney and had had a chance to think about his decision. He said he understood that in a jury trial, 12 people would have to agree that he was guilty beyond a reasonable doubt. He specifically agreed that he was giving up the right to "speak to a group of 12 people and ask for a unanimous verdict." Although the colloquy did not cover every jury-trial facet required by the Seventh Circuit in *Delgado*, our courts have specifically determined that the *Delgado* guidelines are not mandatory under Minnesota

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> waive jury for the purpose of this Trial, but I want to confirm that for the record at this time.
> MR. PIETRASZEWSKI: That's true, Your Honor.
> THE COURT: Alright. . . .

283 N.W.2d at 890.

law. *Ross*, 472 N.W.2d at 654 (approving the same conclusion by this court in *Johnson*, 354 N.W.2d at 543). Having reviewed the record, we are satisfied that the district court properly accepted Griffin's jury-trial waiver and proceeded with a court trial.

Affirmed.